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AUTHOR Virts, Paul H.
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ABSTRACT

Though the government only regulates religious broadcasting directly by issuing licenses for stations owned by religious groups or operated for religious purposes, it indirectly affects a large number of religious programers who do not own stations. Also, the courts and the Federal Communications Commission (FCC) have seldom dealt with cases as basically religious issues but have viewed them as involving other basic issues in broadcasting. The first historical basis of regulation of religious broadcasting was in regard to the rights of religious groups to use the air waves to propagate their beliefs. Generally regulations have required that religious broadcasters adhere to frequency regulations and not attack individuals unfairly. The FCC has refused to force individual stations to broadcast specific religious programs. A second basis of regulation has been the fairness doctrine, which has generally been applied to religious broadcasters in the same way it has been applied to other broadcasters. The third basis for regulation has been institutional issues including employment rules and finances. In the future, religious programers can expect the government to continue to examine their fund-raising activities, employment practices, and adherence to the fairness doctrine. (TJ)

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TRENDS IN THE REGULATION OF RELIGIOUS BROADCASTING

by Paul H. Virts, PhD
Assistant Professor of Broadcasting
CBN University
Virginia Beach, Virginia

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Trends in the Regulation of Religious Broadcasting

Though much has been written about the history and development of broadcasting in the United States, relatively little has been written about the role of religious groups in this process. Religious groups have been interested in using radio and television since their inception, and their imprint has been left on the industry.

Much could be written about the influence of religious groups on broadcasting, but perhaps a few examples will suffice to demonstrate this influence. Ellens suggests that the first radio broadcast was a Christmas program aired by Reginald Aubrey Fessenden in 1906.[1] Just one month after radio station KDKA, the first professional, commercial radio station in the United States, went on the air, it began airing worship services from a local church. Later, great radio personalities, such as Father Coughlin, weilded a good deal of influence with their radio programs.

Surprisingly little has been written about the regulation of religious broadcasting by the government. Like all broadcasting, religious broadcasting uses a medium with limited size--the electromagnetic spectrum--and must be regulated to a certain extent. Though religious broadcasting receives double protection by the First Amendment--freedom of religion and freedom of press--no one seriously challenged the government's regulation of religious broadcasting until the early 1960's.[2] Even with that serious challenge,

the government left intact most of its regulations on religious broadcasting.

Though the constitutionality of the government's regulation of religious broadcasting is an important topic, it is by no means the only important consideration in this area. Little research has been done on the history of the regulation of religious broadcasting. Several cases involving religious broadcasting have played a significant role in shaping the regulation of the entire industry. An in-depth look at these cases provides a better understanding of the regulatory process.

This paper focuses primarily on the subject of trends in the regulation of religious broadcasting, and in doing so it discusses various areas in which the government has regulated broadcasting. Three major historical trends are discussed. However, it needs to be pointed out here that not all of the issues dealt with in each historical period fit into the typology, but the majority of them do.

Two important points need to be made here before proceeding. First, the government only <u>directly</u> regulates religious broadcasting by issuing licenses for radio and television <u>stations</u> owned by religious groups or operated for religious purposes. However, this regulation also indirectly affects a large number of religious program producers who do not own stations. Second, the Federal Communications Commission (FCC) and the courts have seldom dealt with cases involving religious broadcasting as basically religious issues but have viewed these as involving other basic issues in broadcasting--fairness, access, equal employment, etc. Thus, the religious dimension of these cases has almost totally been overlooked by the government.

Right to Broadcast

In the first period of the regulation of religious broadcasting, which runs from the early 1920's through the mid 1940's, the primary emphasis is on questions regarding religious groups' rights to use the airwaves to propogate their beliefs. In this era, the rights and basic responsibilities of religious broadcasters were defined.

From the beginning, the government encouraged and required broadcasters to air religious material. Until the 1960's, religion was one of the four major programming categories of programming which appeared on radio and television license applications. Partially due to pressure applied by former FCC Commissioner Lee Leovinger, the FCC included religion as one of the 14 possible types of programming under the "Other" category of programming. Thus, broadcasters are not required to carry religious programs, but the FCC has suggested religion was one possible type of broadcast. One can argue that the effect of this suggestion is that broadcasters perceive that the FCC is looking for religious programming when making licensing decisions. In its programming requirements, then, the FCC has encouraged rather than prohibited religious broadcasting.

At least two important cases during this early period in the regulation of religious broadcasting dealt more directly with the right of religious groups to air their beliefs. The Young Peoples Association for the Propogation of the Gospel applied for a construction permit for a new station in Philadelphia 1938. The organization proposed that its facilities only be used by those organizations whose beliefs were similar to those of the applicant. In denying the application, the FCC stated:

> Where the facilities of a station are devoted primarily to one purpose and the station serves as a mouthpiece for a definite groups or organization it cannot be said, to be serving the general public. That being the case, if one group or organization is entitled to a station facility for the dissemination of its principles, then other associations of equal magnitude would be entitled to station licenses on the same grounds. Obviously, there are not a sufficient number of broadcasting channels to give each group a station license.[3]

Though the FCC has never formally changed this policy, it does grant licenses to applicants who plan to serve only a small segment of the total potential audience in a market--for example, blacks, Spanish Americans, and so forth. Many of the religious stations air programs that espouse a relatively restricted number of religious viewpoints and are not open to a broad range of viewpoints. Thus, the FCC for all practical purposes does allow a station to propogate one viewpoint as long as the station does so discreetly.

Another question related to religious groups' right to air their viewpoints deals with access to the broadcasting media. The Rev. Dr. Carl McIntire and several other clergymen precipitated one of the first FCC decisions regarding access for religious broadcasts. In 1945, station WPEN in Philadelphia cancelled the contracts for air time for several religious broadcasts and decided instead to air a series of religious broadcasts as a public service. The courts upheld the rights of the local station to make programming decisions and reiterated the prohibition against the FCC making programming decisions.[4] In a similar case, the New Jersey Council of Christian Churches and the Bible Presbyterian Church complained to the FCC that a radio station WCAM would not sell commercial time for broadcasts. Again, the FCC refused to force the station to give the groups access and left programming decisions in the station's hands.[5] In another case, the Massachusetts Universalistic Convention protested when in spite of a contract a local radio station refused to air the convention's Easter

program which attacked the historicity of Christ's resurrection. The court ruled in favor of the station's right to censor broadcasts.[6] In each of these cases, the courts and the FCC refused to force local stations to carry religious programming and left program decision-making to the licensee's discretion. These cases indicate that religious broadcasters do have the right of access to the airwaves only if individual licensees give them that right; the FCC refused to give them that right. Of course, religious groups, like anyone else, can obtain the right to air their beliefs by obtaining a broadcasting license.

Two responsibilities of religious broadcasters were outlined in early cases. The first involved an engineering problem. Evangelist Aimee Semple McPherson was one of the first preachers to realize the potential of radio, and she opened a radio station in her Foursquare Gospel Temple in Los Angeles. When she failed to make sure that her station stayed on its assigned frequency, her station was closed down by the Commerce Department, the agency in charge of regulating radio. She wired Secretary of Commerce Herbert Hoover,

> Please order your minions of Satan to leave my station alone. You cannot expect the Almighty to abide by your wavelength nonsense. When I offer my prayers to Him I must fit into His wave reception. Open this station at once.[7]

She was later persuaded to hire a competent engineer and was allowed to resume broadcasting. At no time was her right to broadcast challenged.

Another early case that helped spell out the responsibilities or religious broadcasters involved Robert Shuler of Los Angeles. When Shuler applied for a license renewal for his radio station KGEF in 1930, the FCC refused to grant the license, and the courts upheld this decision.[8] Among other things, Shuler had used his radio station to attack judges who were handling a case involving his organization, including charging them with committing immoral acts. An even more serious charge was that he used

the station to blackmail an opponent.

Fairness

The regulation of religious broadcasting primarily centered around issues relating to the Fairness Doctrine from the mid 1940's until the late 1960's. Before we can adequately discuss these issues, it will be necessary to briefly sketch the nature of what has become known as the Fairness Doctrine. Though it had earlier expressly forbidden broadcast licensees from editorializing, the FCC did legitimize editorializing in its 1949 statement on fairness in broadcasting. But the Commission also made it clear that it was the "affirmative duty" of licensees to seek out and air opposing views on controversial issues of importance to the public. Two points were purposely left vague--the definition of what constitutes a controversial issue of public importance and a statement as to who should represent opposing views on a subject. These would vary with the community involved and the issue in question.

Another side of the Fairness Doctrine deals with personal attacks that are broadcast. Personal attacks are defined as "statements, in connection with a controversial issue of public importance, attacking an individual's or group's integrity, character, or honesty or like personal qualities, and then not when an individual or group is simply named or referred to."[9] If such an attack occurs, the licensee must provide a tape, transcript or summary of the attack to the one attacked within seven days and must provide the target of the attack a reasonable opportunity to respond.

The fairness issue in religious broadcasting was raised in 1946 when Robert H. Scott petitioned the FCC to revoke the licenses of three California stations because they refused to sell or donate time for him to present talks on atheism while making time available to religious groups to espouse their views.[10] The broadcasters countered that religion was not a contro-

versial issue in their communities and that talks on atheism would be offensive to a large portion of their audiences. Although the FCC ruled in favor of the stations, it also pointed out that atheistic views, like other views, need to be aired and that in some instances atheism could be a controversial issue. In essence, the FCC chose not to penalize three stations for failing to air atheistically oriented programs when most stations around the country failed to do so. Scott filed a similar complaint in 1963, but the Commission said he had failed to provide evidence that the station in question had failed to cover more than one side of a controversial issue.[11]

Well-known atheist Madalyn Murray filed a similar petition in 1965 against 15 radio stations in Hawaii because they refused to air atheistically oriented programs from her Free Thought Society. The FCC reiterated its earlier stand and commented that the "mere broadcast of 'church services, devotionals, and pryers'...was not the presentation of a controversial issue of public importance within the Fairness Doctrine."[12] It is not totally clear from this case whether the Commission intended to adopt a policy exempting "church services, devotionals, and prayers" from the fairness requirements or whether it was simply agreeing with the stations that in their given situations the broadcasting of these religious activities was not a controversial public issue.

One of the most well-known cases involving the Fairness Doctrine and religious broadcasting arose in the license challenges of WXUR and WXUR-FM, owned and operated by Faith Theological Seminary under the direction of the Rev. Carl McIntire. Even before licenses for the two stations were granted in 1965, many expressed misgivings about the Seminary's ability to abide by the Fairness Doctrine given the conservative political views of Dr. McIntire.

The early fears were substantiated. Despite promises to retain the previous formats for the stations, the management substantially altered programming only nine days after taking control. Numerous community groups complained about the stations' one-sided presentations of political and religious views. Personal attacks were made on individuals and groups, but these individuals and groups were not always properly notified. The stations' attempts at getting a diversity of opinions consisted chiefly of featuring call-in and interview programs as well as panel discussions conducted by faculty and staff members of the seminary. Because of these violations, the FCC revoked the seminary's licenses in 1971.[13] The misrepresentation of programming plans was the chief reason for revoking the licenses, but fairness violations also played an important part of the decision. The FCC made it clear that it was not silencing Dr. McIntire and his Twentieth Century Reformation Hour but merely trying to enforce fairness guidelines for licensees.

The seminary contended that the FCC incorrectly applied the Fairness Doctrine to McIntire's religious views, citing the FCC's earlier letter to Mrs. Murray as evidence that religious programming is exempt from the Doctrine. However, the FCC pointed out that in the Murray case

> We held only that we would not disturb a licensee's good-faith judgment that the "mere broadcast of church services, devotionals and prayers is not the presentation of a controversial issue of public importance within the meaning of the fairness Doctrine..." The Fairness Doctrine extends to all expressions of views on controversial issues of public importance, whether or not they be deemed religious views by some persons. Madalyn Murray (letter)...excludes only religious services.[14]

Thus, the Commission clarified its earlier position on the potential for religious broadcasting to be considered controversial.

The most celebrated case in which the Fairness Doctrine was applied to religious broadcasting was the Red Lion case. This case arose when radio station WGCB, owned by the Red Lion Broadcasting Company, aired a "Christian Crusade" program by the Rev. Billy James Hargis in which Hargis made several statements about author Fred J. Cook who had written an uncomplimentary book about Senator Barry Goldwater. Cook claimed that Hargis' statements constituted a personal attack and deamnded a chance to reply, but the station refused to provide the time. The FCC agreed with Cook's assessment of Hargis' remarks and directed the station to allow Cook to respond. Red Lion appealed the decision all the way to the Supreme Court, which ruled in favor of the FCC and Cook and in doing so upheld the constitutionality of the entire Fairness Doctrine.[15] The FCC and the courts dealt with the case on a political rather than religious grounds and made it clear that religious programs were not exempt from the Fairness Doctrine.

Institutional Issues

One might characterize the third period of the regulation of religious broadcasting as dealing with institutional or organization issues. It extends from the early 1970's to the present.

One of the first cases dealt with during this period involved employment based on age, sex, religion, or race, but Title VII of the Act exempted religious organizations from this requirement. The Equal Employment Opportunity Act of 1972 reaffirmed this exclusion. As amended the 1972 Act read, in part

> This subchapter shall not apply...to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of its activities.[16]

In 1970, the FCC adopted rules prohibiting licensees employing more than five persons from discriminating in employment on the basis of race, religion, or national origin; to enforce these rules, the FCC required that all licensees submit annual reports of their employment practices.

One of the first tests of the FCC equal employment rules came when Tyrgve Anderson complained to the Commission that the hiring practices of Kings Garden, Inc., owner of stations KGDN and KBIQ-FM in Edmonds, Wasington, were discriminatory. Anderson objected to being asked questions of a religious nature when he applied for a position as announcer at the stations. Kings Garden claimed it was exempt from the nondiscriminatory employment rules and that its freedom of religion was being infringed upon. The FCC argued that religious radio stations were not exempt from equal employment rules. Furthermore, it reminded Kings Garden that it did not hold its licenses to espouse only one religious viewpoint and that it was not forced to obtain broadcast licenses and could practice its religion without holding a broadcast license. The FCC directed the organization to end its discriminatory practices in all areas of the station's management except those in which a person was "hired to espouse a particular religious philosophy over the air."[17] Kings Garden appealed the decision all the way to the U.S. Supreme Court, which refused to hear the case. Kings Garden complied with the directive, but at least one other station closed down rather than with a FCC order to end religious discrimination in employment;[18] other religious stations appear to be quietly complying.

One of the most interesting arguements raised by Kings Garden in protesting government regulation was that the service of its broadcasting stations had become so deeply intertwined with the rest of its religious activities that the government was interferring with its right to religious

freedom by dictating changes in its broadcasting. The FCC clearly stated its position,

> A religious sect has no constitutional right to convert a licensed communications franchise into a church. A religious group, like any other, may buy and operate a licensed radio or television station. But like any other group, a religious section takes its franchise "burdened by enforceable public obligations."[19]

In short, Kings Garden's argument was invalid.

Some of the more recent institutional issues have dealt with finances. this is illustrated by the FCC's request that Faith Center of Glendale, California, reveal how much money it raised for certain projects and whether the money was actually spent for these purposes.[20] Faith Center Based on First Amendment considerations raise many of the same objections raised in earlier cases, but the FCC stuck to its original request. A similar case involves a station affiliated with the PTL Network in Canton, Ohio.[21] To date, the FCC allegations have not been proven.

The FCC is also investigating church-owned KBSA-TV in Guasti, California, for possible fraud and misrepresentation in the church's sale of $1.5 million in bonds to build and operate the station.[22] The station is also accused of unlawfully transferring control. Though none of the allegations have been substantiated, this case has raised concern among other religious broadcasters who raise bonds for financial backing.

Another financial matter has been rasied by the state of Massachusetts in its investigation of station WXNE-TV in Boston and the licensee, Christian Broadcasting Network (CBN) of Virginia Beach, Virginia. Since CBN is a non-profit organization, its stations were also to be non-profit, but the courts in Massachusetts probed to find out whether the station was abiding by the

state's laws for non-profit organizations.[23] To avoid further investigation, CBN formed a profit-making corporation, Continental Broadcasting Network, which is the Licensee of CBN's radio and television stations. The parent television network remains a non-profit organization.

Future of Regulation

Attempting to assess the nature of government regulation in the future is a risky business, but current actions by the government provide some insights on future trends.

It seems to be fairly clear that the FCC and the courts will continue what I have called institutional regulation. Initially, most religious radio stations were owned by individual community organizations. However, there is a trend toward the establishment of religious broadcasting groups of stations and also of broadcasting networks. As these groups and networks grow larger, the government will almost certainly examine more closely their activities. One can expect scrutiny in at least two areas, both of which deal with finances. First, the government will continue to examine the fund-raising activities of religious broadcasters. Many religious radio and television stations are either semi-commerical or completely non-commercial, so they must rely to some extent on raising money from their audiences. The government will continue to scrutinize the way this money is raised to determine whether religious broadcasters are being good trustees of the public trust. They will also continue to assure that funds solicited for a particular purpose are used for that purpose. The government will also increasingly require non-profit groups to disclose to the public their financial status. There has been a movement under way for several years in the United States Congress to require tax-exempt organizations to disclose financial status. Though this legislation has never passed, it has moti-

vated some religious, non-profit organizations to disclose a limited amount of financial information to the public. Some religious broadcasters have expressed interest in voluntary financial disclosure, but relatively little has been disclosed.

Questions have also been raised periodically about employment discrimination and other practices of non-profit, tax-exempt organizations. Some predict that in years to come the government will regulate more closely all tax-exempt organizations and will remove the tax-exempt status from those who do not meet as-yet unspecified criteria. Many broadcasters may have their tax-exempt status revoked which would place great strains on the financial status of these organizations. However, such actions by the government do not appear to be imminent.

In the future, we can also expect more enforcement of the Fairness Doctrine in religious broadcasting. More of the issues which were once treated as strictly religious--abortion, homosexuality, etc.-- are now being recast as basically political issues and have become controversial issues in many communities. When religious broadcasters begin dealing with these issues, they are increasing the possibility that the stations who air their programs will have to actively seek opposing viewpoints. Evangelist James Robison's television program was recently discontinued on station WFAA-TV in Dallas, Texas because of Robison's statements regarding homosexuals.[24] The station took the step because homosexual groups asked for time to respond to Robision, and it did not want to have to face the fairness issue in the future. Robison's program has since been reinstated under tentative agreement with the station.

The cover story of a recent issue of U.S. News and World Report dealt with religious broadcasters' involvement in political affairs.[25] The most

powerful of these broadcasters appear to be fairly conservative. Unless these broadcasters deal fairly with controversial issues the Fairness Doctrine will likely be invoked more frequently in the future.

Another regulatory issue that will be of interest to religious broadcasters in the future is the deregulation of radio broadcasting. The recent movement toward deregulation began with congressional attempts to rewrite the Communications Act of 1934. Though the rewrite appears to be dead for the time being, the FCC has recently opened hearings on the topic. The deregulation movement is based on the recognition that although the electromagnetic spectrum space is limited, there is still enough space for multiple radio outlets in most communities. The deregulation of radio broadcasting is likely to be both a bane and a blessing to religious broadcasters. On one hand, it would relieve religious radio licensees of following many of the programming and logging requirements imposed by the FCC and would allow greater control over programming by local stations. However, deregulation would also mean that non-religious licensees would not feel pressure from the FCC to include a given amount of religious programming in their schedule, and some licensees might reduce the amount of or completely drop all religious programming.

Endnotes

1. J. Harold Ellens, Models of Religious Broadcasting, (Grand Rapids, Mich.: Eerdmans, 1974), pp. 14-15

2. Lee Leovinger, "Religious Liberty and Broadcasting." The George Washington Law Review, 33 (March 1965), 631-659.

3. 6 F.C.C. 181 (1938).

4. 151 F. 2d 597 (1945).

5. 14 F.C.C. 365 (1949).

6. 183 F. 2d 497 (1950).

7. Herbert Hoover, The Memoirs of Herbert Hoover, Vol. 2 (New York: MacMillan, 1952), pp. 142-143.

8. 62 F. 850 (1932).

9. 8 F.C.C. 2d 721, 724 (1967).

10. 11 F.C.C. 372 (1946).

11. 40 F.C.C. 545 (1963).

12. 40 F.C.C. 647 (1965).

13. 25 RR 2d 2010 (1972).

14. 21 RR 2d 22, 31 (1971).

15. 395 U.S. 376 (1969).

16. 42 U.S.C. Sect. 2000 (e)-1 (Supp. II, 1972).

17. 34 F.C.C. 2d 937, 938 (1972).

18. "Licensee would Rather Switch Off Than Light." Broadcasting, February 17, 1975, p. 41.

19. 498 F. 2d 51, 60 (1974).

20. 69 F.C.C. 2d 1123 (1978).

21. "FCC Investigates PTL Licensee in Ohio," Broadcasting, April 16, 1979, p. 54.

22. "Larger Issues Hinge on KBSA Renewal." Broadcasting, March 5, 1979, pp. 33-34.

23. "CBN Under Pressure." Broadcasting, February 26, 1979, 82.

24. "Evangelist Fights Cancellation of TV Show." The New York Times, April 1, 1979, p. 43.

25. "Preachers in Politics." U.S. News and World Report, September